

### **REMARKS**

In the Action, Claims 1-12 are pending. Claims 1-12 are rejected. Claims 1 and 4 have been amended. Claim 3 is cancelled. Claims 1-2 and 4-12 remain.

Claims 1, 2, 7 and 10 are rejected under 35 USC 103(a) as being unpatentable over Applicant's admitted prior art ("Admission"), in view of Kao et al. (US 7,212,490) and Cisco Port adaptor ("Cisco"). Claims 5, 6 and 12 are rejected under 35 USC 103(a) as being unpatentable over Admission as applied to claim 1, in view of Kao et al. (US 7,212,490) as applied to claim 1, and Cisco, as applied to claim 1 and further in view of Doverspike et al. (PG PUB 20020097671. Claims 3, 8, 9 and 11 are rejected under 35 USC 103(a) as being unpatentable over Kao et al. (US 7,212,490), in view of Doverspike et al. (PGPUB 20020097671,

In response, Applicant has amended Claim 1 to incorporate the limitations of Claim 3 which has been cancelled. In rejecting Claim 3, the Examiner relies upon the combination of Kao et al. and Doverspike et al. Furthermore, with respect to Claim 3, the Examiner contends that the references teach the method of calculating a transmission coefficient using the hop number and delay time based on a path between the reception nodes, and inter-node usage rate as discussed regarding Claim 8. In the discussion concerning Claim 8, with respect to step (b) which corresponds to the selecting a ring portion of Claim 3, the Examiner acknowledges that Kao et al. does not expressly teach that the transmission coefficient is calculated based on usage rate for transmitting packets as selected. The Examiner thus relies upon Doverspike et al. and equates weights as mentioned in Doverspike et al. with Applicant's transmission coefficient.

In equating weights with transmission coefficient, the Examiner relies upon paragraph [0006], lines 9-12. The complete sentence cited by the Examiner for this purpose reads as follows:

"Weights are computed for the links using an array representing a restoration link capacity-which is expressed as a number of channels/wavelengths in optical networking-needed on each link over possible failures of the service path."

This is further explained in paragraph [0031] wherein initial weights are initialized to a value reflecting the hop count, and with reference to paragraph [0033] wherein the weight is shown as being computed as shown as step 405 of Figure 4 which for other than extreme situations, is defined as  $W_{0k} * (\text{size} - C_k) / \text{size}$  where  $W_{0k}$  is the initial hop count, size is the bandwidth needed for the connection, i.e., the number of channels (see [0018]) and  $C_k$  is the “spare” restoration channels on optical link k (see [0033]).

Thus, it appears that the Examiner is construing Doverspike's  $(\text{size} - C_k) / \text{size}$  with Applicant's usage rate. While the formula in Doverspike can, in one sense, be construed as a usage rate, as set forth in the application at page 11, “the term usage rate as used herein refers to an allowable transmission rate per node according to a fairness algorithm. The unit of the usage rate is Mbps.” Thus, Doverspike's number of channels are not the same as usage rate as that term is defined by Applicant. Furthermore, it is noted that Doverspike is directed to a mesh network and, distinguishes mesh topology networks from ring topology networks in paragraph [0004].

Thus, it is submitted that the Examiner has combined terms from similar at one level, but on the other hand clearly different technologies to support the rejection. However, since Applicant's claimed usage rate differs from Doverspike's number of channels, and since different network topologies are involved, the combination of Kao et al. and Doverspike does not render the invention as defined in amended Claim 1 obvious. Claim 8, which was rejected on the same basis as Claim 3 is patentably distinguishable over the prior art for the same reasons as discussed above with respect to amended Claim 1.

In view of the foregoing, reconsideration and withdrawal of the prior art rejections as to Claims 1, 2 and 4-12 is requested since the remaining claims depend from either Claim 1 or Claim 8.

Claim 4 is rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. . In response, Applicant has amended Claim 4 responsive to this rejection.

Accordingly, reconsideration and withdrawal of the rejection of Claim 4 is requested in view of such amendment and the foregoing discussion.

Applicant submits that all pending claims, namely Claims 1-2 and 4-12 are now patentable over the Examiner's rejections and objections.

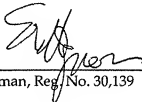
If there are any fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. If a telephone interview would expedite the prosecution of this Application, the Examiner is invited to contact the undersigned at (310) 207-3800.

Respectfully submitted,

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Linda Metz September 28, 2007